Filed 8/23/16 M.C. v. Superior Court CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

M. C., Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES et al., Real Parties in Interest.	B272083 (Los Angeles County Super. Ct. No. DK07561)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Frank J. Menetrez, Judge. Petition granted.

Los Angeles Dependency Lawyers, Inc., Law Office of Danielle Butler Vappie and Courtney Fisher, for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Real Party in Interest.

In this juvenile dependency writ proceeding (Cal. Rules of Court, rule 8.452), M.C. (mother) challenges an order terminating reunification services and scheduling a hearing for the selection and implementation of a permanent plan for her daughter, J.S. (Welf. & Inst. Code, § 366.26).[1] Mother's sole contention is that the juvenile court erred in terminating reunification services because the Los Angeles County Department of Children and Family Services (Department) failed to satisfy the notice requirements of the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.).

The Department concedes it failed to satisfy ICWA's notice requirements, and agrees the matter should be remanded to the juvenile court to ensure compliance. Accordingly, we grant the petition and remand with directions to effectuate proper notice under the ICWA.

FACTUAL AND PROCEDURAL BACKGROUND

1. Procedural Overview.

The facts giving rise to the dependency proceeding and those concerning the reunification period are not relevant to the discrete issue raised in this writ proceeding. Accordingly, we offer only a brief overview. We discuss the facts relating to the ICWA claim after the overview.

In September 2014, the Department detained then 12-year-old J.S. from her mother's home and filed a dependency petition on her behalf.

In November 2014, the juvenile court sustained certain allegations in the petition. At the conclusion of the disposition hearing two months later, the juvenile court ordered the Department to provide mother with family reunification services.

In May 2016, at the conclusion of a contested 18-month review hearing (§ 366.22), the juvenile court terminated reunification services for both mother and J.S.'s father, and it scheduled a hearing for the selection and implementation of a permanent plan for J.S.[2]

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1 Undesignated statutory references are to the Welfare and Institutions Code.

2 Father is not a petitioner in this writ proceeding.

Mother filed a writ petition challenging the juvenile court's order. As noted, her sole contention is that the juvenile court erred in terminating reunification services because the Department failed to comply with ICWA's notice requirements. Accordingly, we now discuss the facts concerning the ICWA contention.

2. The ICWA Evidence.

At the September 2014 detention hearing, mother declared she may have Cherokee Indian ancestry and the court ordered the Department to investigate the claim and provide the court with a supplemental report.

In a November 2014 jurisdiction/disposition report, the Department stated that ICWA "does or may apply." Attached to the report were copies of notices the Department had sent earlier that month to three Cherokee entities—the Cherokee Nation of Oklahoma (Cherokee Nation), the Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee—as well as to the United States Secretary of the Interior and the Bureau of Indian Affairs (BIA). Certified mail receipts were also attached to the report.

The Department also provided a response it received from the Cherokee Nation, stating that the information the Department provided was incomplete and requesting that the Department provide the middle names and dates of birth of both of J.S.'s parents. The letter stated that "[i]t is impossible to validate or invalidate this claim without [the requested] information."

In a Last Minute Information form which the Department submitted in late November 2014, a Department social worker stated that "the undersigned responded [to the Cherokee Nation] with the requested information." However, as the Department concedes, there is nothing in the record to confirm what information, if any, was provided to the Cherokee Nation. In addition, there is nothing in the record demonstrating, or even claiming, that the information purportedly provided to the Cherokee Nation was forwarded to the other Cherokee entities.

Nonetheless, when the parties appeared for the dispositional hearing in early January 2015, and apparently without any additional information, the juvenile court

found there was no reason to know J.S. was an Indian child under ICWA and it declined to order that any additional notices be sent to any tribe or to the BIA.[3]

Subsequently, in various reports, the Department declared ICWA did not apply, referencing the juvenile court's finding from January 2015. The juvenile court's January 2015 finding that ICWA did not apply was not questioned at any time during the juvenile court proceedings. Mother raised the issue for the first time in the writ petition she filed in this court.

DISCUSSION

ICWA includes a "requirement of notice to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights 'where the court knows or has reason to know that an Indian child is involved.' " (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8, quoting 25 U.S.C. § 1912(a).) Enacted in 2006, section 224.2 "codifies and elaborates on ICWA's [notice] requirements." (*In re Isaiah W., supra*, 1 Cal.5th at p. 9.)

If the Department receives any information that must be included in an ICWA notice which was not previously provided, the Department must provide the additional information to all tribes entitled to notice and to the BIA. (§ 224.3, subd. (f); *In re I.B.* (2015) 239 Cal.App.4th 367, 377.) Among other things, ICWA notices must include "all names" and the birthdates of the child's biological parents. (§ 224.2, subd. (a)(5)(C).) Therefore, after the Department received the middle names and birthdates of J.S.'s parents, it was required to provide the information not only to the Cherokee Nation, but also to the other Cherokee entities who received the original notices, as well as to the BIA.

In this case, there is nothing in the record to confirm what information, if any, was provided to the Cherokee Nation in response to its request. Moreover, as the Department

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[3] The finding that ICWA did not apply was not made by the judicial officer who ultimately terminated mother's reunification services some 16 months later. The second judicial officer began presiding over the case approximately nine months after the ICWA finding was made.

concedes, "there is nothing to indicate that the other relevant tribes were provided mother's or father's middle names or full dates of birth."

In light of the above, the appropriate remedy is to grant a limited reversal and remand to permit compliance with the ICWA notice requirements, and upon compliance, to enable the juvenile court to reinstate its orders if no Indian tribe wishes to intervene.[4] (See *Tina L. v. Superior Court* (2008) 163 Cal.App.4th 262, 267-268; *In re I.B.*, *supra*, 239 Cal.App.4th at pp. 377-378.)

DISPOSITION

The writ petition is granted. The juvenile court is directed to (1) vacate its order of May 2, 2016, terminating reunification services for M.C. and scheduling a hearing pursuant to section 366.26, and (2) order the Department to comply with the notice provisions of section 224 et seq. If after proper notice the juvenile court finds J.S. is an Indian child, the court shall proceed in conformity with ICWA and applicable California law. If after proper notice the juvenile court finds J.S. is not an Indian child, the juvenile court shall reinstate the order terminating reunification services and scheduling a hearing pursuant to section 366.26.

This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

RUBIN, Acting P.J.

WE CONCUR:

FLIER, J. GRIMES, J.

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[4] Although the Department concedes mother is entitled to relief, we note that mother's failure to raise the issue at an earlier time does not preclude her from doing so after the termination of reunification services. (See *In re Isaiah W., supra*, 1 Cal.5th at p. 6 ["Because ICWA imposes on the juvenile court a continuing duty to inquire whether the child is an Indian child, we hold that the parent may challenge a finding of ICWA's inapplicability in an appeal from the subsequent order [terminating parental rights], even if she did not raise such a challenge in an appeal from the initial [disposition] order"].)